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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

<b>A&amp;B IRRIGATION DISTRICT,</b>	)	
	)	Case No. CV-07-655
Petitioner,	)	
	)	
vs.	)	<b>RESPONDENTS' MOTION</b>
	)	<b>TO DISMISS</b>
<b>DAVID R. TUTHILL, JR.,</b> in his official	)	
capacity as director of the Idaho Department	)	
of Water Resources, and <b>THE IDAHO</b>	)	
<b>DEPARTMENT OF WATER</b>	)	
<b>RESOURCES</b>	)	
	)	
Respondents.	)	
	)	

COME NOW, State Respondents, David R. Tuthill, Jr., Director of the Idaho Department of Water Resources ("Director") and the Idaho Department of Water Resources, an executive agency of the state of Idaho ("Department"), and pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure move the Court to dismiss this action for failure to state a claim upon which relief can be granted. The grounds for the motion are: 1) that Petitioner is not entitled to

extraordinary writ relief because an adequate remedy at law exists; and 2) that the Respondents are acting in response to Petitioner's water delivery call in accordance with law. These grounds are discussed more fully in the Respondents' brief submitted herewith. This motion is also supported by the Affidavit of David R. Tuthill, Jr., Director of the Idaho Department of Water Resources, submitted herewith.

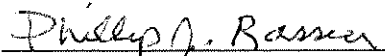
Respondents request an award of reasonable costs and attorneys' fees in connection with this motion pursuant to Idaho Code § 12-117.

Respondents request oral argument on this motion and have filed a notice of hearing.

DATED this 31<sup>st</sup> day of September, 2007.

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Idaho Department of Water Resources

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the State of Idaho, employed by the Attorney General of the State of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 21<sup>st</sup> day of September 2007.

Document(s) served: RESPONDENTS' MOTION TO DISMISS

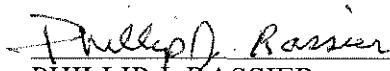
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